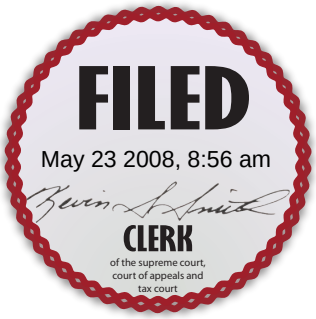

ATTORNEY FOR APPELLANT:

KENNETH R. MARTIN
Goshen, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

VERONICA GARCIA,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0802-CR-30
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0611-FA-00089

May 23, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Veronica Garcia ("Garcia") pleaded guilty in Elkhart Circuit Court to Class C felony possession of cocaine and Class C felony neglect of a dependent. She was sentenced to consecutive terms of four years for each conviction for an aggregate sentence of eight years. Garcia appeals arguing that her sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On November 1, 2006, Garcia was charged with Class A felony dealing in cocaine and Class C felony neglect of a dependent. Garcia was charged after a search of her residence yielded over three hundred grams of cocaine, some of which was found in areas accessible to her three minor children. On October 11, 2007, Garcia pleaded guilty to the lesser-included offense of Class C felony possession of cocaine and Class C felony neglect of a dependent as charged. The plea agreement capped Garcia's maximum consecutive sentence at ten years.

Garcia was sentenced on November 1, 2007. At the sentencing hearing, the trial court found the following aggravating circumstances:

> [D]anger to multiple children as opposed to just one child, the fact there are multiple cases (2 in number), the fact that a prior deferral of prosecution proved unsuccessful, and the fact that the Pre-Sentence Investigation Report itself contains two (2) separate and distinct versions of what occurred from the Defendant, version A being the Defendant did not know what was going on, and version B being that the Defendant's boyfriend was being paid to store drugs at the residence. The Court notes these two (2) positions are the opposite of each other and such that both cannot be true and correct.

Appellant's App. p. 58. The court considered Garcia's acceptance of responsibility for her criminal conduct, her addiction issues, lack of prior criminal history, and her age of

twenty-seven years as mitigating circumstances. Id. The court concluded that "any one of the aggravators outweigh all of the mitigators for the purpose of determining whether consecutive sentences should be imposed." Id. The court then ordered Garcia to serve consecutive terms of four years for each conviction for an aggregate sentence of eight years. Garcia now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Garcia argues that her aggregate eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The trial court ordered Garcia to serve consecutive four-year sentences for her Class C felony possession of cocaine conviction and Class C felony neglect of a dependent conviction. Four years is the advisory sentence for a Class C felony. See Ind. Code 35-50-2-6 (2004 & Supp. 2007). Pursuant to Garcia's plea agreement, the State agreed to a cap of ten years on the total sentence to be imposed. Garcia received a sentence that was actually less than the maximum she bargained for, and therefore, she bears the considerable burden of persuading our court that her sentence is inappropriate. See Childress, 848 N.E.2d at 1081 (Dickson, J., concurring) ("A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less

than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness.")

Over three hundred grams of cocaine was found in Garcia's home. The bulk of the cocaine was found in a thermos in under the bed in Garcia's bedroom. However, officers found cocaine on a nightstand next to the bed. That cocaine was easily accessible to Garcia's children, ages eight, six, and one and a half at the time of the offense. Garcia also gave conflicting accounts concerning whether she was aware of the amount of cocaine in her home. Given the large amount of cocaine and its accessibility to Garcia's young children, we conclude that her aggregate eight-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Garcia also argues that her placement in the Department of Correction is inappropriate particularly given her lack of criminal history and her desire to maintain contact with her children and provide support for them. "The location where a sentence is to be served is an appropriate focus for application of our review and revise authority." Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007) (citing Biddinger v. State, 868 N.E.2d 407, 414 (Ind. 2007)). However, it is "quite difficult for a defendant to prevail on a claim that the placement of his or her sentence is inappropriate." Id. "As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a trial court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale." Id. at 343-44.

Garcia admits that she is a drug addict, but has not sought treatment for her addiction. At sentencing, she requested placement in a substance abuse treatment

facility, and the trial court recommended that Garcia receive treatment while she is incarcerated. Garcia allowed a drug dealer to reside with her and her children demonstrating a complete disregard for her children's safety and well-being. For these reasons, we conclude that Garcia has not carried her burden of persuading us that her placement in the Department of Correction is inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

MAY, J., and VAIDIK, J., concur.